

## Palmer, John

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**From:** John Palmer <Palmer.John@epamail.epa.gov>  
**Sent:** Wednesday, August 05, 2015 2:51 PM  
**To:** Palmer, John  
**Subject:** Fw: Approach to complete OR toxics  
**Attachments:** OR Tox RPA Concepts.docx

----- Forwarded by John Palmer/R10/USEPA/US on 08/05/2015 02:50 PM -----

From: John Palmer/R10/USEPA/US  
To: Kim Kratz <kim.kratz@noaa.gov>, Dennis McLerran/R10/USEPA/US@EPA, Mike Bussell/R10/USEPA/US@EPA, Michael Tehan <mike.tehan@noaa.gov>, Laurie.Beale@noaa.gov, Adrienne Allen/R10/USEPA/US, will.stelle@noaa.gov,  
Date: 08/01/2012 03:31 PM  
Subject: Re: Approach to complete OR toxics

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Hi NMFS folks,

As agreed to with Will and Dennis yesterday, please find attached some edits to Kim's email outlining the RPA/RPMs. We hope this is helpful to write the final draft of the RPA/RPM language.

We are still checking with our HQ on some the "non-jeopardy tests" to see if there are any further edits EPA may request regarding sidebar language. So, there is the potential for a few more suggested edits.

We also think it would be very beneficial for us to review the final draft of the RPA/RPM language prior to finalization.

Please let us know if you have any concerns with our edits.

John

*(See attached file: OR Tox RPA Concepts.docx)*

Note: I am out of the office starting tomorrow (Thursday afternoon) and will be back on Friday Aug 10. So, if you have any questions, please email or call tomorrow. And, if possible, it would be great to see the final draft of the RPA/RPM language tomorrow.

▼ Kim Kratz ---07/31/2012 09:19:22 AM---Mike, John, We've described below how NMFS is proceeding with this consultation based

From: Kim Kratz <kim.kratz@noaa.gov>  
To: Mike Bussell/R10/USEPA/US@EPA, John Palmer/R10/USEPA/US@EPA  
Cc: Michael Tehan <mike.tehan@noaa.gov>, Robert C Anderson <robert.c.anderson@noaa.gov>  
Date: 07/31/2012 09:19 AM  
Subject: Approach to complete OR toxics

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Mike, John,

We've described below how NMFS is proceeding with this consultation based on the agreements that we reached on our conference call yesterday. In that call, we refined the approach laid out by Will and Dennis at the end of the call last Friday.

We all thought that this general approach to concluding the biop met legal and policy issues and was acceptable to our HQs.

**The approach would work as follows:**

1. For the three criteria where we have consensus on the biop's conclusion and the RPA's alternative criteria (acute and chronic copper, chronic ammonia), NMFS would conclude Jeopardy and request that EPA disapprove the proposed criteria and promulgate the alternative criteria identified in NMFS' RPA for copper while defaulting to the existing state standard on chronic ammonia. .
2. For the one criterion where we have consensus on NMFS' conclusion on the proposed criterion but not on the RPA's current numeric alternative criterion (acute cadmium), NMFS would conclude Jeopardy and request that EPA disapprove the proposed criterion and promulgate an alternative criterion. The RPA would not include an alternative numeric criterion, rather the RPA would leave it up to EPA to arrive at that alternative within two years using the general process below (**Process for promulgating alternative criteria**).
3. For the three criteria where EPA and NMFS did not reach consensus (acute ammonia, acute and chronic aluminum), NMFS would conclude Jeopardy and request EPA promulgate alternative criteria. The RPA would not include an alternative numeric criterion but leave it up to EPA to arrive at that alternative within two years using the general process below.

**Process for promulgating alternative criteria:**

The EPA would develop their own data and analytical methods to revise and derive numeric criteria for aquatic life, taking into account the same factors that NMFS did in completing its analysis for the other criteria in this consultation. For example, they would take into account multiple life-stage effects and multiple endpoints, to include at a minimum: delayed mortality, reproduction, growth, physiological, cellular, behavioral, and biochemical effects.

The analytical results would then be evaluated with similar mortality/population modeling that NMFS used in this biop to confirm that they did not jeopardize listed salmonids. The criteria for this analysis would include:

- The EPA should use toxicity data based on exposure-response curves instead of fixed durations toxicity tests to assess effects on multiple endpoints.
- The EPA should ensure that revised numeric criteria for toxics are adjusted to account for chemical mixtures versus aquatic life criteria based on single chemical exposure.
- The EPA should ensure that the revised numeric criteria for aquatic life criteria do not result in a negative change in the numeric value of lambda (annual rate of population growth) based on a minimum 15-year geometric mean abundance estimate for listed species at the population scale.
- The EPA should ensure that the revised numeric criteria for aquatic life criteria are run through a population model, *e.g.*, Leslie Matrix, for listed species to ensure that the revised numeric criteria meets the population growth rate criteria of this conservation recommendation.

These criteria were previously described in the initial February draft biop that offered several alternative RPA approaches.

This approach would not preclude EPA from identifying the current proposed criteria if it is consistent with the sideboards listed above in the process for promulgating alternative criteria. This approach would also allow us to consider the effect of the final criteria that will be identified now, precluding the need to reinstate later when they are promulgated.

## Additional EPA concern

You and John raised an additional concern during the call yesterday over one of the RPMs in the draft ITS covering monitoring, which is related to EPA's authorities with respect to program implementation and effectiveness. You earlier voiced a concern with the frequency and intensity of the monitoring that was specified in the draft ITS. In response to this concern, we amended the language to instead refer to our intent of the monitoring, without spelling out a specific sampling scheme, instead indicating we would work to develop the details within a year after the biop is completed.

The current draft language for the monitoring RPMs is:

*The following measures are necessary and appropriate to minimize the impact of incidental take of listed from the proposed action and the reasonable and prudent alternative:*

- 1. The EPA shall monitor and report to NMFS on the implementation of the revised numeric criteria as revised by the RPA. To do this, EPA shall develop a plan to be submitted to NMFS no later than 12 months from the date of this opinion. The EPA shall carry out a monitoring plan that: (1) implements an EPA NPDES oversight program of Oregon's NPDES program to (a) ensure that the State of Oregon is renewing NPDES permits; and (b) ensure that the numeric criteria considered in this opinion are being implemented in new and renewed NPDES and MS4 permits; (2) EPA shall carryout monitoring of ambient concentrations of copper, cadmium, aluminum, and ammonia in mainstem rivers from a representative sample of fourth-field USGS hydrologic unit code watersheds within each of NMFS' recovery domains for the ESA-listed species considered within this opinion each calendar year in Oregon for a period of 10 years from EPA's final action under the Clean Water Act on Oregon's proposed criteria.*
- 2. The EPA shall ensure completion of the monitoring and reporting program to ensure that the extent of take is not exceeded, and to confirm that the terms and conditions in this incidental take statement are effective in avoiding and minimizing incidental take.*

The intent is to ensure that summaries of this monitoring data are provided to NMFS each year to ensure that the program is being carried out as anticipated and that the underlying assumptions on effectiveness are being met. The details are to be developed within 12 months of the biop being completed. We hope our edits address your concerns.

Thank you for all of your efforts and creative inputs offered in crafting this approach.

With this strategy to guide us, we intend to move quickly to finalize the biop by Aug. 14. It will be very tight.

Kim